

COAL LINKER

v.

COAL INDIA LIMITED

(Civil Appeal No. 1146 of 2003)

SEPTEMBER 7, 2009

**[MARKANDEY KATJU AND ASOK
KUMAR GANGULY, JJ.]**

Arbitration Act, 1940 – ss. 29, 17 and 30 – Pendente lite interest – Power of court to grant – Arbitrator while passing award granting interest for pre award period but not for post award period-from the date of award till the date of the decree – Awardee instead of filing objection to the award u/s. 30, filing application u/s. 17 for decree in terms of the award – Executing court passing decree and directing payment of interest from the date of award till the date of decree – Correctness of – Held: Not correct – Executing court could not have gone beyond the award and granted interest for the post award period – Thus, it went beyond its jurisdiction and passed decree which is a nullity.

Parties entered into a work contract. Disputes arose between the parties and was referred to the arbitrator. Arbitrator passed an award and granted interest to the appellant for the pre-reference period and during pendency of the arbitration proceedings but not after the date of award till the date of the decree. Respondent challenged the same but was unsuccessful. Appellant filed application u/s. 17 of the Arbitration Act, 1940 for passing decree in terms of the award. Single Judge of High Court passed a decree, confirming the award. It directed payment of interest from the date of the award till the date of the decree. Both the Single Judge and the Division Bench of High Court set aside the order of the

A executing court directing payment of interest from the date of the award till the date of the decree. Hence the present appeal.

Dismissing the appeal, the Court

B HELD: In the instant case, interest has been granted by the arbitrator in the award for the first two periods-pre reference period and interest during pendency of the arbitration proceedings. But interest has not been granted by the arbitrator in the award for the last period, C from the date of award till the date of the decree. The awardee-appellant filed an application under section 17 of the Arbitration Act, 1940 for pronouncing a judgment in terms of the award. It did not file any objection u/s. 30 of the Act to the award about denial of such interest. So D there is no scope for the executing court to go beyond the award and grant interest for the post award period which was not granted in the award. The executing court has gone beyond the award and thus had gone beyond its jurisdiction and passed a decree which thus, becomes E a nullity. [Paras 9, 11, 13, 14, 15 and 17] [159-C-D; 160-B; 161-E-G; 162-B-C]

Visakapatnam Municipal Corporation vs. K. Satyanarayana and Co. (1995) 2 SCC 385, relied on.

F *Executive Engineer (Irrigation), Balimela and Ors. vs. Abhaduta Jena and Ors. (1988) 1 SCC 418; Gujarat Water Supply and Sewerage Board vs. Unique Erectors (Gujarat) (P) Ltd. and Anr. (1989) 1 SCC 532, distinguished.*

G *Secretary, Irrigation Department, Government of Orissa and Ors. vs. G.C. Roy (1992) 1 SCC 508, referred to.*

Case Law Reference:

(1988) 1 SCC 418 Distinguished. Para 11

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(1989) 1 SCC 532	Distinguished.	Para 11	A
(1992) 1 SCC 508	Referred to.	Para 12	
(1995) 2 SCC 385	Relied on.	Para 16	

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1146 of 2003. B

From the Judgment & Order dated 8.3.2001 of the High Court at Calcutta in G.A. No. 2489 of 1996.

K.V. Vishwanathan, Amit Bansal, Navin Chawla for the Appellant. C

Mathai M. Paikeday, Sunil Roy for the Respondent.

The Judgment of the Court was delivered by D

GANGULY, J. 1. The appellant herein, a proprietary concern, was given a work order on or about 5.7.1982 by Coal India Limited (hereinafter referred to as "the respondent") for transportation of coal/coke by road to the respondent's stockyard at Kanpur and also for operation of the said stockyard. E

2. Pursuant to such work order a formal agreement was entered into between the appellant and the respondent and the said agreement contained an arbitration clause. As disputes and differences arose between the parties, a reference was made to the sole arbitrator for resolving the dispute and an award dated 30.4.1993 was passed awarding an amount of Rs.51,77,600/- in favour of the appellant. Appellant was granted interest of Rs.11,39,560/- calculated at the rate of 15% from October, 1990 to April, 1993. Interest was also granted for the pre-reference period to the extent of Rs.10,97,250/- but in the award no interest was granted from the date of the award till the date of the decree. F G

3. Challenging the said award, the respondent filed an H

A application, but the same was dismissed by the learned Single
Judge of the Calcutta High Court by a judgment and order
dated 3.11.1995. Thereafter, an appeal was preferred before
the Division Bench of the Calcutta High Court and the Division
Bench also dismissed the appeal of the respondent on
B 25.04.1996. Thereafter, a decree was passed by the learned
Single Judge of the Calcutta High Court confirming the said
award. The said decree directed payment of interest @ 18%
per annum from the date of the said *award till the date of the
decree.*

C 4. The respondent filed a special leave petition before this
Court challenging the order of the Division Bench of the
Calcutta High Court dated 25.04.1996. On that special leave
petition, this Court by an order dated 10.5.1996 directed the
respondent to deposit an amount of Rs.40 lakhs within 6 weeks
D with the Registrar, Original Side of the Calcutta High Court and
permitted the appellant to withdraw the same on furnishing a
bank guarantee. Ultimately, by order dated 22.7.1996 this
Court dismissed the special leave petition filed by the
respondent.

E 5. Thereafter, execution proceeding was initiated by the
appellant for execution of the unsatisfied portion of the decree
dated 2.5.1996. Against the said execution proceeding, an
application was filed by the respondent under Section 47 of the
F Code of Civil Procedure contending inter alia that the decree
dated 2.5.1996 insofar as the same directs payment of interest
from the date of the award till the date of the decree is a nullity
and the same is not executable against the respondent.

G 6. Learned Single Judge of the Calcutta High Court by
judgment and order dated 13.12.1996 held that insofar as the
decree was passed providing for grant of interest from the date
of the award till the passing of the decree, is a nullity and is
inexecutable and the appellant was directed to refund the
amount representing the same pendente lite interest. Against
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the same judgment and order the present appellant filed an appeal before the Calcutta High Court and the Division Bench of the Calcutta High Court by judgment and order dated 8.3.2001 was pleased to dismiss the appeal.

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7. Challenging the said appeal this special leave petition has been filed.

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8. The question in this appeal is whether the Division Bench was correct in setting aside the order of the Executing Court directing payment of interest at the rate of 18% from the date of the award till the date of the decree.

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9. Few facts of the case are relevant to understand issues involved herein. Admittedly, in the award, interest from the date of the award till the date of the decree has not been granted. What has been granted is pre-reference interest and the interest from October 1990 to April 1993 i.e the interest during the pendency of the arbitration proceedings. The award is dated 30.04.1993. No post award interest has been granted.

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10. The appellant herein-the awardee did not raise any objection under Section 30 of the Arbitration Act (hereinafter referred to as "the Act") to the award about denial of such interest. On the other hand, the appellant filed an application under Section 17 of the Act for passing of a decree *in terms of the award*. Therefore, the Executing Court while passing a decree in terms of the award should not go beyond what has been given in the award.

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11. In this connection certain decisions have been cited which are not strictly attracted in the facts situation of the instant case. Reference was made to the decision of this Court in the case of *Executive Engineer (Irrigation), Balimela and others vs. Abhaduta Jena and others* – (1988) 1 SCC 418. In that case the question was about the competence of arbitrator to award interest on a reference made without intervention of the Court and the three-Judge Bench of this Court held that in cases

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A coming after the commencement of the Interest Act of 1978 an arbitrator has the same power as the Court to award interest up to the date of institution of the proceedings. In cases which arose prior to the commencement of the Interest Act 1978, the arbitrator has no such power under provisions of the previous

B Interest Act of 1839. In the instant case, as pointed out above, there is no dispute about the competence of the arbitrator to grant interest. The arbitrator, as noted above, granted interest but did not grant any interest after the date of the award till the date of the decree. Therefore, the decision in *Abhaduta Jena* (supra) has no relevance. Reference was also made to the

C decision of this Court in the case of *Gujarat Water Supply and Sewerage Board vs. Unique Erectors (Gujarat) (P) Ltd. and another* - (1989) 1 SCC 532, wherein a two-Judge Bench of this Court relied on the previous decision of this Court in

D *Abhaduta Jena* (supra) and dealt with the aspect of grant of interest by the arbitrator in paragraphs 14, 15 and 16 of the said judgment. In *Gujarat Water Supply* (supra), this Court held that an arbitrator can award the interest which can cover three periods namely; (a) the period prior to the commencement of the arbitration proceeding, (b) period during which the

E arbitration proceeding was pending and (c) the period between the date of the award to the date of the decree i.e. the post award period. The learned Judge has held that in the light of the decision in *Abhaduta Jena* (supra) the arbitrator could not have awarded interest "for the period between August 22, 1984

F and till the date of the publication of the award i.e. July 1985". That was the period during which the arbitration proceeding was pending. Ultimately, the Court deleted the interest awarded by the arbitrator for the period from August 22, 1984 till the date of the award. (See para 16 of the report). It may be again

G pointed out here that in this case the award in which interest has been given by the arbitrator has been finally upheld. Therefore, the principles decided in *Gujarat Water Supply* (supra) have no application to the facts of the case.

H 12. However, in the case of *Secretary, Irrigation*

Department, Government of Orissa and others vs. G.C. Roy – (1992) 1 SCC 508, the Constitution Bench of this Court overruled the decision of the *Abhaduta Jena* (supra) and held on construction of Section 14 and 29 of the said Act that the arbitrator can grant pendente lite interest. In paragraph 8 in the judgment of *G.C. Roy* (supra) the Constitution Bench of this Court clearly mentioned three periods for which the question of award of interest by the arbitrator may arise. The said periods have been clearly pointed out in paragraph 8 of *G.C. Roy* (supra) and the same is set out as below:

“(i) for the period commencing from the date of dispute till the date the arbitrator enters upon the reference; (ii) for the period commencing from the date of the arbitrator’s entering upon reference till the date of making the award; and (iii) for the period commencing from the date of making of the award till the date the award is made the rule of the court or till the date of realisation, whichever is earlier...”

13. Admittedly, in the instant case interest has been granted by the arbitrator in the award for the first two periods. But interest has not been granted by the arbitrator in the award for the last period.

14. As noted above, the awardee-appellant herein, filed an application under Section 17 of the Act for pronouncing a judgment in terms of the award. So there is no scope for the Executing Court to go beyond the award and grant interest for the post award period which was not granted in the award.

15. Here the Executing Court has gone beyond the award and thus had gone beyond its jurisdiction and passed a decree which thus becomes a nullity.

16. Similar principles have been laid down by this Court in the case of *Visakapatnam Municipal Corporation vs. K. Satyanarayana & Co.* – (1995) 2 SCC 385. In paragraph 3 of

A the report, the Court held:

“On the admitted facts, viz., that the respondent had not preferred any objection to the award in question under Section 30 of the Act and, in fact, had applied for a decree in terms of the award, the trial court could not have granted *pendente lite* interest which was not a part of the award. To that extent, the trial court had exceeded its jurisdiction”.

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17. The same facts are present here. Here also the appellant herein has not filed any objection under Section 30 of the Act to the award. Rather the appellant had applied for a decree *in terms of the award under Section 17 of the Act*.

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18. In view of such clear factual position, we find no merit in this appeal and which is accordingly dismissed. There is no order as to costs.

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N.J.

Appeal dismissed.